

840 CMR 10.00: STANDARD RULES FOR DISABILITY RETIREMENT

10.04: Standard For Decision, Findings of Fact

(1) No retirement for ordinary or accidental disability shall be allowed unless the retirement board, based upon substantial evidence, makes findings of the facts upon which it relied in making its decision.

The board must find that:

- (a) The member is unable to perform the essential duties of his position; and
- (b) The inability is likely to be permanent; and
- (c) If the application is for accidental disability retirement, that the incapacity is the natural and proximate result of a personal injury sustained or hazard undergone while in the performance of the member's duties at some definite place and some definite time without serious and willful misconduct on the member's part; and
- (d) The member should be retired.

(2) In making the finding required by 840 CMR 10.04(1)(b) the retirement board shall consider, but not be limited to, the following factors:

- (a) Whether the nature of the condition or injury is such that it can be expected to improve over a reasonable period of time;
- (b) Whether the nature of the condition or injury is such that it could be expected to improve if the member were willing to undergo reasonable medical treatment or rehabilitation.

(3) In making the finding required by 840 CMR 10.04(1)(c) the retirement board shall apply the following presumptions:

- (a) The retirement board shall presume that any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a member as described in M.G.L. c. 32, § 94 was suffered in the line of duty unless the contrary is shown by competent evidence.
- (b) The retirement board shall presume that any condition of impairment of health caused by any disease of the lungs or respiratory tract, resulting in total disability or death to a member described in M.G.L. c. 32, § 94A was suffered in the line of duty, as a result of the inhalation of noxious fumes or poisonous gases, unless the contrary is shown by competent evidence.
- (c) The retirement board shall presume that any condition of cancer affecting the skin or central nervous system, lymphatic, digestive, hematological, urinary, skeletal, oral or prostate systems, or lung or respiratory tract resulting in disability or death to a member described in M.G.L. c. 32, § 94B was suffered in the line of duty unless it is shown by a preponderance of the evidence that non-service connected risk factors or non-service connected accidents or hazards undergone caused such incapacity.

(4) In making the finding required by 840 CMR 10.04(1)(c) the retirement board shall determine:

- (a) Whether the presumptions set forth in 840 CMR 10.04(4)(a), (b) or (c) apply. If one of the presumptions applies to the application:

- 1. Whether the applicant successfully passed a physical examination upon entry to service or subsequent thereto which failed to reveal any evidence of such condition; and
- 2. Whether in the line of duty an applicant claiming the presumption contained in M.G.L. c. 32, § 94A responded to calls that would have involved the inhalation of or exposure to noxious fumes or poisonous gasses; and
- 3. Whether an applicant claiming the presumption contained in M.G.L. c. 32, § 94B served in a position that renders him or her eligible for the application of the presumption for at least five years and regularly responded to calls of fire during some portion of his or her service; and
- 4. Whether an applicant who left active service and is claiming the presumption contained in M.G.L. c. 32, § 94B first discovered the condition for which retirement is sought within five years of the last date that he or she actively served in a position described in M.G.L. c. 32, § 94B.

- 5. Whether any contrary evidence is sufficient to overcome the applicable presumption

- (b) Whether other causal factors related to the member's physical or mental condition might have contributed to the disability claimed; and
- (c) Whether any event other than the accident or hazard upon which the disability retirement is claimed might have contributed to the disability claimed.